THE USE OF TECHNOLOGY SUPPORTING SHARING ECONOMY BUSINESS MODELS: THE EUROPEAN INTEREST IN OPERATIONS OF INVESTMENT CROWDFUNDING

EL USO DE LA TECNOLOGÍA DE APOYO A LOS MODELOS DE NEGOCIO BASADOS EN LA ECONOMÍA COLABORATIVA: EL INTERÉS EUROPEO EN LAS OPERACIONES DE CROWDFUNDING DE INVERSIÓN

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Resumen. Desde hace algunos años, en el escenario internacional han nacido nuevos modelos de empresas, conectados al uso de la *web* y a relaciones que se basan en lo digital, en consecuencia del bien conocido fenómeno de crisis que se está progresivamente difundiendo. Estas nuevas empresas desarrollan actividades que son muy diferentes entre ellas, pero tienen principios comunes que les agrupa en ese gran movimento identificado como *Sharing Economy*. Unas de las aplicaciones más relevantes de las innovaciones tecnológicas que apoyan los principios de collaboración y sharing, son las plataformas de financiación, que apuntan a juntar empresas e individuos en busca de capitales y emparejarle con otros dispuestos a invertir, prestar o donar su propria disponibilidad de dinero. Aprovechando del potencial ofrecido por *internet*, crowdfunding está al centro del escenario moderno, en un contexto general donde la reducción de recursos disponibles obliga a cambios radicales en las decisiones de los ciudadanos, en sus hábitos de consumo e inversión, y también en la manera de hacer negocios.

Palabras clave: Sharing economy, crowdfunding, internet, business models.

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Abstract. For some years now, in the international scenario, new business models closely linked to the use of the *web* and digitally-based relations, have recently emerged in consequence to well-known phenomena of crisis are progressively spreading. These new enterprises carry on activities that are very different among them, but have common criteria and principles and this lets them fall within that big movement identified as *Sharing Economy*. One of the most relevant applications of technological innovations supporting principles of collaboration and sharing are financing platforms, aimed at gathering businesses and individuals looking for capitals and matching them with others willing to invest, lend or donate their money availability. Exploiting the potential offered by *internet*, crowdfunding is at the core of the modern scenario, in a general context where the decrease in available resources imposes radical changes in citizens' decisions, consumptions and investments' habits, and also in the way to do business.

Keywords: Sharing economy, crowdfunding, internet, business models.

I. INTRODUCTION

The growing technological progress is radically modifying the economic and financial system, generally remodelling relations among intermediaries, companies and savers. Services and business activities with traditional procedures and methods are progressively transforming in mainly digital activities, with updated structural and functional characteristics that are absolutely different from the known mechanisms of intermediation, markets, infrastructures and supplied services[1]. Equally, digital technology is taking an increasingly central and determining role in the development of new economic activities which, specifically through this instrument, manage to find new market spaces and interesting growth prospects, both in innovative sectors and in traditional ones, determining a big change in their paradigma.

Although maintaining their own characteristics, the different ways these new techniques are applied, foster direct connections among operators, reducing spaces for traditional intermediation activities, resulting in savings in terms of time and money, more efficiency, reliability of offered goods, economic sustainability, creation and circulation of new wealth. Such changes are creating new opportunities for suppliers and consumers of services but, at the same time, unprecedented challenges for regulating bodies, whose task is trying to regulate phenomena in constant and rapid evolution.

The European Union aims at taking advantage of the huge potential offered by new technologies, placing them at the service of macro and micro economic targets, as economic growth, stability, integrity, efficiency and competitiveness of the financial market, but also using them to protect consumers, companies and investors' trust and security[2]. For those reasons, both possible advantages and risks connected with the use

[1] *Fintech and financial services: Initial Consideration,* IMF Staff Discussion Note, June 2017.

[2] Over this year, the Commission has launched *Fintech survey: a more competitive and innovative European financial sector,* structured on four main general targets representing, at the same time, the main opportunities and relative challenges of FinTech: 1. Promoting access to financial services for

of the internet in the financial and economic sector are being analised. Therefore, on one hand it is believed technology can promote access to new services and the use of new techniques for a high number of companies and investors, increasing a proper financial inclusion[3], on the other hand possible distortions connected to a deceitful or illegal use are being assessed. The main European design is to promote financial innovation, simplifying offer and access to certain services, to reduce costs, keeping users' trust and taking advantage of the appearance of new and modern values.

II. THE MAIN CHARACTERISTICS OF NEW BUSINESS MODELS.

For some years now, in the international scenario, new business models closely linked to the use of the *web* and digitally-based relations, recently born in consequence to well-known phenomena of crisis are progressively spreading. These new businesses follow not only conventional trading logics of market, but above all, new criteria, adopting a different and innovative idea of consumption, more focused on and aware of individuals and community's real needs and, therefore, more sustainable. It takes into consideration not merely economic implications, but also the equally relevant social, environmental, personal consequences linked to a certain activity. At the core of this radical economic, social and cultural transformation there is the technology that allows a growing flexibility and adaptability to the needs of a higher and higher number of people.

These new enterprises carry on activities that are very different among them, but have common criteria and principles and this lets them fall within that big movement identified as *Sharing Economy*. Although there is not an exact definition of this category yet, generally this term identifies models that base their operations on new languages and principles as cooperation, sharing, economic sustainability, access to services rather than owning goods, swap rather than purchase, direct contact instead of intermediation of traditional trading, financial, or institutional structures. The mission and the challenge of Sharing Economy is to promote a different distribution of wealth, an economic and social innovation earlier than a technological one. Being a child of digital culture and economic crisis, Sharing Economy is giving life to an economic system that diverges from the traditional one both from the point of view of values and from the point of view of the market model and its actors[4]. In other terms, a particular model of crowdeconomy which, side by side to the old channels of financing and research of capitals is arising and takes advantage of technological instruments, moving

consumers and businesses; 2. Reducing operational costs and increase efficiency in the sector; 3. Making the single market more competitive by reducing entry barriers; 4. Striking a better balance between the need to share data and to have transparency with clients and data's protection.

[3] With Resolution of 17th May 2017 *Financial Technology: the influence of technology on the future of financial sector* (2016/2243(INI), the European Parliament considered that FinTech can represent an effective instrument for financial inclusion, allowing financial services ad hoc for those who didn't have access to them and therefore resulting in a more inclusive growth.

[4] J. RIFKIN, *L'era dell'accesso,* Mondadori, Milan, 2000.

corporate private investments to the web and modifying the entire system basing it on digital logics, as accessibility, democratization, globalization, cooperation and sharing[5].

In this way, tangible and valid options to traditional forms of economic activities are provided, by creating structures that, putting in direct connection all the operators/users, aim at disintermediating the system. Common trading structures interposing between producers and consumers are replaced by networks of virtual connection, linked to the use of the *internet* and of *social networks*, giving the possibility to people to meet directly, and to share certain goods, knowledge, services, not just for merely entertaining purposes but, and this is the new feature, for economic purposes[6]. In this regard, we also talk about technology and *internet*–oriented re-intermediation, to indicate the way in which regulated activities are disintermediated and at the same time re-intermediated according to new and different paradigmas. For example, *equity crowdfunding* platforms intermediate when placing shares and disintermediate markets and buyers as those of *peer-to-peer* loans intermediate or sell loans and disintermediate banks and lenders, that are the so-called *robo-advisors,* supply automated advisory in the field of investments and disintermediate traditional advisors[7]. Therefore the activity carried out by new specialised subjects managing digital platforms, making contacts among users easier and possible exchanges more direct, gains importance as they work on a *peer to peer* basis and create new economic and legal relations, faster and more straightforward, carried out beyond and in the absence of traditional activities of intermediation. They are based on a essentially *peer-to-peer* cooperation through which we can share, exchange, sell goods, spaces and services, but also performances, skills, time and money.

In this regard "Collaborative Consumption" is used to describe the rapid developments of concepts like *sharing*, *bartering*, *lending*, *trading*, *renting*, *swapping*, *funding* revised through the use of technology[8]. Some other authors also talk about "Digital Collaborative Services" which, apart from providing a different way of consuming, also supply new business, financial, social, trading, working models[9]. They are defined collaborative because they envisage peer-to-peer exchanges, and digital because they take place through digital technologies. Recently a new idea has spread, linked to the peculiar ways these activities are carried out. It is believed that it would be a sort of *crown-based capitalism* rather than of *sharing economy*, underlining that in new models services are provided by the community, and not any more by companies

[5] R. FERRARI, *L'era del FinTech. La rivoluzione digitale nei servizi finanziari,* Franco Angeli Editor, Milan, 2016.

[6] According to A.SCIARRONE ALIBRANDI, in his *Lecture* at the Second Meeting of the Association of Scholars of Economic Law, in *Rivista Trimestrale Diritto dell'Economia* number 4/2016, the impact technological innovation and of the so-called sharing economy on traditional relation models in the economic field is very strong, so that in different economic sectors "In the past needs were met necessarily through a contract relation with an intermediary that had the "exclusive" possibility to provide certain services/products, while now it can be shaped in the direct relation (even a contractual one) with somebody having an opposed need, met in the so-called marketplace or intermediation platform".

[7] As Research Report on Financial Technologies (Fintech), IOSCO, February 2017.

[8] R.BOTSMAN E R.ROGERS, *What's mine is yours,* Collins, London, 2010, collaborative consumption is a business model destroying, overcoming and reinventing, not only what we consume, but also the way in which we consume.

[9] M. MAINIERI, *Collaboriamo,* Hoepli, Milan, 2013.

(*crown-based*), but they are paid anyway, and they are not for free. Actually, we would not be dealing with a strictly-speaking sharing economy, but with a new form of capitalism in which individuals' skills are made available not only the company they are working for, but to *online* portals[10].

At the core of similar phenomena there is a radical change in the use of internet, more widespread, but above all, more aware, since people are not any more simple *web* users, passively using and receiving information, messages and news but they become always more aware and take active participation in initiatives on this media[11]. Hence, the special definition "web 2.0 users" has been created: the simple *web* user is transformed in creator, receiver and transmitter of certain contents. Web 2.0 users, within specialized platforms, access information, evaluate it, create it and transfer it to other users, by posting their opinions and their experiences about companies, services or goods offered or used. This happens in several economic sectors, from knowledge (Wikipedia) to videos (Youtube), communication (Skype), music (Myspace), products (Ebay), finance (Kickstarter), trips (Airbnb), transports (Uber).

A new system is therefore created, that independently from traditional upside-down advertisement channels, can guarantee adequate levels of reliability of products or services offered. To the benefit both of clients, who can take advantage of this cooperation, creating relations based on mutual trust, when different opinions are generally shareable, both of offering companies which, in order to avoid the "virtual word of mouth" that of course penalizes unfair operators, will be pushed to offer efficient, reliable, trustful services or goods to stay appropriately on the market. New elements acquire importance, as the reputation that bidders manage to obtain among the public, skills and professionalism of the activity performed, and they all are adequately appreciated and allow to work efficiently and profitably. In this sense we could talk about a sort of *shame culture*, that is the fear to let the market know about situations of failing in meeting commitments or in adopting adequate levels of fairness, transparency and trustfulness of behaviours, from which risks of losing clients and widespread mistrust could derive. In fact, in case of negative feedbacks, the company reputation decreases with a probably simultaneous loss of clients. The level of reputation can be certified by opinions expressed by clients/users/consumers.

Other determining elements on which *sharing economy* business models are based is trust among people who do not know each other, efficiency, fairness and good functioning of *on line* platforms. With the new instruments offered by the *web*, knowledge among people can spread, and equally their trust, not only through their reviews or opinions expressed but also through information on the *web* that helps profiling a person. In this way, a homogeneous group (*community*) is spontaneously

[10] A. SUNDARAJAN, *La sharing economy aumenta la possibilità di redistribuire la ricchezza*, speech at the festival of Sharing Economy, Milano, 25th-26th September 2016 according to which crowd-based capitalism is a new form of economy based on two factors: trust and new technologies.

[11] A clear example of this kind is the on line aencyclopedia Wikipedia where a web formed by millions of people not only uses information contained there but also constantly contributes to design, update and improve it, through an active participation, that considers also possible criticism made by the very same users.

created and organizes itself, through mutual cooperation and trust among participants, creating economic value for itself and also for others.

III. CROWDFUNDING OPERATIONS LAYOUT.

Among the most relevant applications of technological innovations supporting principles of collaboration and sharing there are financing platforms, aimed at gathering businesses and individuals looking for capitals and matching them with others willing to invest, lend or donate their money availability. Exploiting the potential offered by *internet*, crowdfunding is at the core of the modern scenario, involving different categories of investors on the market of capitals, favoured by greater ease in accessing new techniques, in a general context where the decrease in available resources imposes radical changes in citizens' decisions, consumptions and investments' habits, and also in the way to do business.

The term *crowdfunding* indicates a particular technique that allows *funding* different kinds of initiatives, business or social projects, events of different nature, by gathering capitals among the *crowd*, that is among an undetermined and undefined number of people, through particular specialized platforms on the *web*. To gather the economic resources that are necessary to start and develop a certain project, promotors *pich* their idea to potential *crowdfunders*, who, if interested, usually participate usually with limited amounts of money, in order to achieve a common goal. Specialized platforms give the possibility to pich initiatives to the public and make it easier for supply of and demand for funding to meet, directly and with usually limited costs [12].

Crowdfunding can be applied to any field: from technology to art, from entertainment to social fields, culture, music, projects of humanitarian scientific nature, to political ones, up to purely business projects[13].

Conventionally the origins of *crowdfunding* are identified in the so-called *crowdsourcing*, that is that particular technique through which part of the development of an activity is *outsourced* to the *crowd*. In particular, the task of solving a certain problem is entrusted to an undefined group of people who, gathered in an *online* virtual community, can propose solutions, tips, ideas, strategies (the so-called *problem solving*)[14].

[12] In this sense P.ALVISI, *Equity crowdfunding: uno sguardo comparatistico*, in *Rivista di Diritto bancario*, number 3/2014, pag. 1 and following.

[13] For example it can be used by musicians, directors, music registi, record or film producers to gather necessary resources to record a disc, broadcast a music event or make a film; or public administrators or officials to implement urban planning projects in the field of road system, public transports and pollution; journalists to found a new newspaper or a review; pharmaceutical companies or laboratories to develop new projects of reserch; international organizations to build infrastructures in developing countries and so one. In the United States crowdfunding was used in 2008 by Barack Obama, to fund his electoral campaign, allowing him to collect from the crowd about 750.000,00 dollars, a sum three times higher than his political opponent's one.

[14] The term *crowdsourcing* was used for the first time by J.HOWE, *The Rise of Crowdsourcing*, in *Wired*, 2006, page 176 and following, to indicate a model which, addressing an undefined number of people, allows to find more easily subjects suitable to develop a certain activity, to solve certain difficult problems or to give new ideas. Some authors underline that despite the term *crowdsourcing* is recent, its origins are very far. In particular, the first drawing-up of *Oxford English Dictionary* was done by openly inviting all the readers to send their reviews (the so-called *quotation slips*). In this sense A.FELSTINER,

Crowdfunding is a relatively young technique, that is currently and progressively developing all over the world[15].

From the definition used above the typical elements of this operation can be identified:

a) Bottom-up funding. Funding does not come from a unique subject (ex. a bank proving businesses with credit) but from people, generally not professionals, united by the interest in supporting a specific initiative.

b) Use of new technologies. Money is collected through specialized *on line* platforms, that are particular *web* sites making it easier for lenders and receivers to meet.

c) Innovative use of the *web*. Gathering people and their common interests gives life to the so-called *communities*, based on operational and communicative logics that use the *internet* and its applications in an active, more modern and advanced way.

d) Presence of interests of different nature. Lenders can be moved by economic or business interests, with an expectation of success and reward for the financed project. However, they have also other interests, connected to the particular nature of the financed initiative and to new participation rules, relevant from the point of view of collaborative, sharing, social, cultural, scientific acknowledgement.

For these reasons *crowdfunding* appears like an innovative financing instrument that is able to put together the different needs of the operators involved: private needs (making a profit, reward for business initiative, return on investment) or public needs (business innovative features, the social scope of the activity, collective value of the project).

Those features justify the fact that *crowdfunding* falls into the field of *sharing economy*, as it is modelled on a "*commons-based peer production*" rather than a "*firm production*". Those characteristics, in fact, overturn traditional relations between producers and consumers, putting them on a different position of common interests. Clients do not limit themselves to just buying goods or services produced by others, but are actively involved, with new ways and terms, in their production, taking the risk connected to the funding. They become real entrepreneurs/investors of the same used goods. In this sense we talk about *"prosumer"* to indicate the merging in a new subject of usually opposed figures like the one of *producer* and of *consumer*[16].

Different models of *crowdfunding* can be identified depending on the different type of reward for the lender.

Working the Crowd: Employment and Labour Law in the Crowdsourcing Industry, in *Berkeley Journal of Employment and Labor Law*, Vol. 32, No. 1, 2011; S.WINCHESTER, *The Meaning of Everything: The Story of the Oxford English Dictionary*, Oxford University Press, 2003.

[15] For an in-depth analysis of crowdfunding on the global market please read IOSCO Research Report on Financial Technologies (Fintech) February 2017 and Crowdfunding in the EU Capital Markets Union , European Commision 3.5.2016 154 final Commission Staff Working Document.

[16] A.TROISI *Crowdfunding e mercato creditizio: profili regolamentari,* in *Contratto e Impresa,* number 2/2014, pag. 519 and following.

Donation-based crowdfunding. Lenders donate a certain amount of money to fund a specific initiative, usually for charity purposes, while receiving no financial or material return.

Reward-based crowdfunding. Upon payment of the amount of money, lenders receive a non-financial reward, that is a sort of social, personal, cultural acknowledgement, for having made their contribution[17]. If the reward is proportional to the financed sum, we talk about *pre-selling crowdfunding*. *Reward-based crowdfunding* has two different variants: the so-called *"all or nothing"*, where the money collected is going to fund the project only if it reaches the predetermined plafond; the so-called "*keep it all*", where all offers are retained by the platform and transferred to the initiator regardless of the achievement of the plafond.

Lending-based crowdfunding. Companies or individuals try to obtain funds from the crowd in the form of a loan agreements. This form of *crowdfunding* also includes several variants from the basic business model: a) *consumer lending*, where private individuals (*consumer-to-consumer*) or institutions (*business-to-consumers*) lend money directly to other private individuals, usually without any kind of guarantee from borrowers; b) *business lending*, where private subjects (*consumer-to-business*) or institutions (*business-to-business*) lent directly to companies, even under safeguards.

Invoice trading crowdfunding. Through the *online* platform businesses send invoices or unpaid credits, individually or within a packet, to a *pool* of investors. Usually in these cases investors are institutions or subjects with particular skills and value and the reward is determined through *on line* auctions.

Royalty based or *profit-sharing crowdfunding*. The funding of a business initiative is rewarded with participation to future profits. In this model, enterprises share future profits and earnings with the crowd, while lenders become partners of the financed company. Often these fundings are made through contract instruments like *silent partnerships* that do not mean being qualified as partner.

Investment-based crowdfunding. Particular types of companies issue shares, bonds or contract instruments and offer them to the public through an *online* platform. *Equity based crowdfunding* falls into this category, where lenders become partners of the financed business, taking active participation in its performance and taking, pro quota, the business risk.

Crowdfunding hybrid models. When features and elements of the different types above mentioned are combined at the same time.

For some years now, another form of *crowdfunding* called *Do It Yourself* (*DIY*) has been developing, consisting in creating independently a collection fund-raising campaign and promoting it among the public through your own *website* (do-it-yourself). Identified also as independent *crowdfunding*, this particular kind is taking on a higher significance, for all those projects that are not able to find space within specialized platforms.

Different rewards mean different rules applied. For example, while the regulation applicable to *donation based* or to *reward based* is the same issued for

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[17] Typical Examples are the possibility to obtain a certain number of copies of a disc that crowdfunders contribuited to fund; or to have access to the film set or an invitation to the premiere of a film; or the copy autographed by the writer of a literary or scientific work.

corresponding civil regulations, for *equity crowdfunding* in different countries of the EU, a specific regulation is applied, different both to the one related to other financial investments both to the one applied to participation in traditional trading companies.

IV. EUROPEAN INTEREST IN NEW FINANCING TECHNIQUES FOR BUSINESSES.

European Authorities and Regulators from different member States are currently studying the model of *investment crowdfunding*, with specific reference to *equity based*, for its value of effective instrument that, supporting creating new businesses but also researching for new investments, can exploit the huge potential of the *web* and making its contribution in helping economic recovery, in a difficult moment like the current one.

To react against the long period of weakness of the economic system, the European Union has undertaken a regulation policy supporting private business initiative, trying to identify new conditions and new principles able to promote productivity and competitiveness, increasing the whole development and economic growth, and creating new job opportunities[18].

Considering the basic reliance of the European business system on bank credit[19], its structure, formed by small and medium- sized enterprises with a strong family component affecting corporate and financial decisions, as well as the growing reduction in the level of financing granted by banks (*credit crunch*), Authorities have designed new strategies aimed at pushing the business system towards a higher dimension, especially by developing the capital market[20] necessary to provide financing with alternative sources or complementary to bank credit that could give the possibility to banks to have more liquidity to reinject in their structures, relaunching investments, innovation and repositioning on the market. The aim is to improve capital transfer towards real economy, with instruments able to overcome obstacles existing between savers' offers and businesses' demands, creating a more efficient and functional system of channelling financial resources — the so-called investment channel — both at a national and international level. This can activate virtuous mechanisms of money

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[18] For European Commission socially sustainable spread of knowledge, impulse to innovation and development of entrepreneurial spirit are necessary factors to achieve the mission in support of growth and competitiveness in the economic system. In *Communication from the Commission Europe, 2020 – A Strategy for smart, sustainable and inclusive growth*, on 3rd March 2010, available on: https://ec.europa.eu/commission.

[19] The eccessive dependence of businesses from dal bank financing, intending to meet short or medium term needs, rather than long term targets, has been analysed by national and international institutions. In this sense VISCO, " *Final Remarks, Ordinary Assembly of participants"*, 31st May 2013; International Regulations Bank according to which "in Italy 92% of fundings in favour of non-financial companies comes from banks, a percentage far higher than the 85% of European average".

[20] Ecofin identified three main types of measures for funds to economy: relaunch the market through simple, transparent and reliable securitisation; intensify channels of financing on the market, especially for SMEs, by developing more stock, bond or mini bond market; promoting diversification del of the European financial system, improving access to capital markets both for SMEs and for investors, and also by setting a *Capital Market Union*. In this sense in *Promoting investment On-going initiatives and the role of Ecofin, Informal Ecofin – Breakfast meeting*, Milano, 13th September 2014, on http://www.consilium.europa.eu/it/documents-publications.

circulation within the economic cycle, notwithstanding the high levels of uncertainty, risk aversion and generalized mistrust towards the capital market that is characterising the current situation[21]. Hence new particular forms of collecting capital were born, supported by advances in I.T. technologies, allowing an immediate and direct link between savers and businesses outside the banking market and falling into the more general framework designed by European institutions[22].

Diversifying financing instruments for innovative businesses and widening the audience of potential investors are one of the main cornerstones of the recent action plan of European Union on the capital market[23]. For this reason attention has been focused on those enterprises that typically have similar features, that are innovative *start-ups*, innovative small and medium enterprises and, in general, all those subjects mainly investing in innovation and research, as well as on these new financing techniques.

Equity crowdfunding is considered an important instrument that can significantly contribute, to achieve EU action plan, especially promoting small enterprises, for which accessing the traditional bank credit is very difficult, both in the initial phase and in the expansion or consolidation one.

After the first measures aimed at illustrating the possible risks and dangers above all for *retail* investors[24], Esma published an *Opinion* in December 2014, for National competent authorities and a piece of *Advice* for European institutions in order to achieve a more aligned regulation and supervisory within the European Union. The European Commission adopted a 2014 communication[25] which was later followed by setting up study groups among operators and experts in the field and by the publication of a guide[26] and more in-depth documents[27].

The European Parliament, with two distinct resolutions, believed it was appropriate to create an adequate regulation system able to promote and exploit the opportunities offered by innovative financings based on new technologies also through a necessary rationalization of the different member States' regulations[28].

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[21] In this sense the Green Book of the European Commission on 18th February 2015 COM 2015 – 63 Final "How to build a capital Market Union".

[22] Over this year, Commission has launched *Fintech survey: a more competitive and innovative European financial sector*, where general targets as financial stability, integrity, efficiency and financial market competitiveness, protection of consumers, businesses, and investors' trust and security which can be achieved also by using the new techniques of funding.

[23] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets Union*, COM (2015) 468/2, 30th September 2015, available on: http://eur-lex.europa.eu.

24 ESMA, *Warning for investors relative to dangers in* on line *investments*, Septembre 2012, available on the website http://www.esma.europa.eu.

[25] Report of the Commission to the Parliament, the Council, the European Economic and Social Committee to the Board of Regions *Exploiting the potential of crowdfunding in the European Union*, Bruxelles, 27th March 2014 COM(2014) 172 final.

[26] European Commission "W*hat is crowdfunding? A guide for small and medium enterprises*", 2015, available on https://ec.europa.eu.

[27] European Commission, *Crowdfunding in the EU Capital Markets Union*, *Quot.*

[28] Resolution of 9th July 2015, *Building a Capital Markets Union,* (2015/2634(RSP)). Resolution of 19th January 2016, *Stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union*, (2015/2106(INI)). available on: http://www.europarl.europa.eu.

Without a uniform European regulatory framework, some member States have introduced, or are about to, tailored domestic regimes having the double function of promoting *crowdfunding* as a source of financing for economy and facing the main risks especially for investors. Although coherent in their general approach, these measures are not homogeneous, have big differences in projecting and in putting in practice rules, maintaining a certain fragmentation in the market[29].

V. THE SOURCES OF ITALIAN DISCIPLINE ON EQUITY CROWDFUNDING.

Italy has been the first European country, and one of the first at a global level[30], adopting a specific regulation on *equity crowdfunding*. Although quite recent, it is in constant evolution, and constantly monitored to improve it and make it more efficient.

Among the numerous derogations to traditional corporate, tax, administrative, employment, insolvency and financial principles in order to start and develop some new types of enterprises as innovative *start-ups*[31], Law Decree n. 179/2012, the so-called Decree on Growth *bis*, converted in Law 17/12/2012 number 221, established a precise discipline on the offer of share capital to the public through *on line* portals. To this end, important modifications to the Financial Services Act contained in article 1 paragraph 5 *novies* and 5 *decies* have been introduced, with the definitions of portal to collect capitals for innovative *start-up* and of an innovative *start-up*, in the article 50-

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[29] In this sense *EBA Draft Response to the EC Consultation Document on Fintech: a more competitive and innovative European Financial Sector*, 2017. available on http://www.eba.europa.eu.

[30] This financing was born in the United States, where in 2012 a specific discipline contained in the so called *Jumpstart Our Business Startups* (*JOBS ACT*) was adopted, introducing a particular exemption to the *Securities Act* to obtain clearance to act as intermediators in the field of *crowdfunding*. The measure delegated SEC to arrange an impletementation regulation.

[31] In compliance to art.25, paragraph II, innovative *start-up* is a corporation, set up also in the form of cooperation, of the Italian regulation, that is a Societas Europaea, resident in Italy in compliance to article 73 of the decree of the President of the Republic on 22nd December 1986, n. 917, whose shares or stocks in the share capital are not listed on a regulated market or on a multilateral system of negotiation, with the following requisites: a) most shares or stocks of the share capital or the right to vote in the ordinary assembly of partners are held by physical people; b) it is set up and has been carrying out business activity for no longer than forty eight months; c) the headquarters of its business and interest is in Italy; d) starting from the second year of activity of the innovative start-up, the total of the amount of yearly production, as resulting from the latest budget approved within sic months from the end of the business, is not higher than 5 million euros; e) does not distribute, and has not distributed, profits; f) its only social object is the development, production and trading of innovative and highly technological goods and services; g) was not set up in consequence of a merging, merging or after transfer of a company or a branch of a company; h) it has at least one of the following requisites: 1) expenditure for research and development are equal or higher than 30 per cent of the hisghest value between cost and total production value in innovative start-up; 2) employment as employees or collaborators with any titl, in a percentage equal or higher than one third of the total workforce, of staff having the title of phd or who are having their phd at an Italian or foreign university, or having a degree and have been doing for at least three years, activity of research certified at public or private institutes of reserch, in Italy or abroad; 3) is holder or licensee or keeper of at least an industrial ownership right related to an industrial, biotecnological invention, a Topography of Semiconductor Products or a new vegetal variety directly regarding the corporate social object and business.

quinquies, dedicated to the activity of managing portals to collect capitals for innovative *start-ups* and 100-*ter,* relative to offers through portals to collect capitals. To complete and implement the main regulation the National Commission for Companies and the Stock Exchange issued Regulation N. 18592/2013.

This system, restricting *equity crowdfunding* operations only to innovative *start-up,* included those having a social mission[32], has been modified once by Law Decree n. 3/2015, the so-called *Investment Compact*, converted with modifications in Law 33 from 24th March 2015 which extended the new financing techniques to innovative small and medium enterprises, to bodies of collective investment of saving and corporations mainly investing in innovative *start-ups* and in innovative SMEs. Later, the National Commission for Companies and the Stock Exchange, with resolution n.19520 on 24/02/2016, modified the previous regulation to adapt it to new rules.

Lastly, article 1 paragraph 70 of the Law 232/2016, the 2017 Budgetary Law and article 57 paragraph 1 of the following Law Decree 50/2017, Corrective Decree, furtherly extended operativeness of *online* portals to allow that all SMEs, without considering if they are ltd or joint stock companies, collect venture capital, as defined by European Union[33], regardless of the innovative feature of the company, as well as to bodies of collective investment of saving and to corporations mainly investing in SMEs.

When this lecture is being prepared, the National Commission for Companies and the Stock Exchange, following this news and the regulation contained in the administrative order implementing directive 2014/65/Eu (Mifid II) under approval, started a consultation with the financial market to furtherly review the previous 2013 regulation[34]. The main proposals of modifications involve:

a) the need for managers of portals to adhere to a system of indemnization protecting investors in compliance to article 59 of the Consolidated Law on Finance or, as an alternative, to stipulate an insurance to cover civil responsibilities for damages coming from professional negligence in order to sign up and stay ordinary section of the register;

b) the introduction of the voluntary renounce to authorization and the explicit regulation of the process revocation and cancellation, similarly to what included in the authorization process.

c) Tightening obligations in the field of conflicts of interest for authorized operators, who have the explicit prohibition to publish on their portals offers having as

[32] In compliance to paragraph IV of article 25, innovative start-up with a social mission carries out its activity exclusively in the following sectors, indicated by article 2, paragraph I of the Law Decree on 24th March 2006, n.155: social care, sanitary, socio-sanitary, education, training, protection of environment and ecosistema, promotion of cultural heritage, social tourism, university and post-universitary training, research and supplì of cultural services, extra-school training, instrumental services for social businesses.

[33] With Reccomendation on 6th May 2003, in European Union Official Gazette Law 124/36 of 20th May 2003, European Commission defined SMEs as *those* businesses employing less than 250 people, whose yearly turnover is not higher than 50 million EUROS or whose yearly balance sheet is not over 43 million EUROS. Small enterprises employ less than 50 people and have a yearly turnover or a yearly balance sheet not higher than 10 million EUROS. Microenterprises less than 10 people whose yearly turnover or yearly balance sheet not higher than 2 million EUROS.

[34] Available document from 6th July 2017 “Revision of the Regolation n. 18592 on 26th June 2013, on www.consob.it.

an object financial instruments issued by themselves or by subjects belonging to the same group.

d) Acknowledging recess and co-sale towards all those types of businesses, with a time limit generally set in three years.

e) the necessary subscription, in order to finalize the offer, of a share of at least 5% of financial instruments offered by particularly qualified investors. In this regard, to help offering companies, the new figure of the investor supporting small and medium enterprises is introduced, thus replacing the previous figure of the investor supporting innovation.

All these mentioned corrective measures are united by same targets: apart from extending the types of businesses that can be financed and the kinds of instruments that are offered, they aim at simplifying access conditions or, reduce relative costs, and guarantee quality and reliability to the service provided by portals. Particular attention has been paid to buyers, both for peculiar characteristics of *on line* investments, and for the fact that they belong to a growing part of the population, lacking sufficient financial knowledge to properly understand the value of the operation[35].

VI. RULES OF CONDUCT OF AUTHORIZED OPERATORS AND SAVERS'PROTECTION.

In compliance to paragraph II of article 50 *quinques* of the Consolidated Law on Finance, the activity of managing *online* portals is restricted to two types of subjects: investment companies and banks authorized to the relative investment services (the so-called operators by law) and the subjects listed in a proper register held by the National Commission for Companies and the Stock Exchange (the so-called authorized managers) on the condition that those last subjects transfer received orders only to banks and investment companies.

While the activity of operators by law managing *on line* portals is undergone to ordinary rules included the Consolidated Law on Finance to provide investment services, the one carried out by authorized managers, for which the discipline contained in Part II, Title II and in articles 32 and following of the Consolidated Law on Finance is not applied, it must comply with specific implementation measures established by the mentioned National Commission for Companies and the Stock Exchange regulation.

Equity based crowdfunding has all the elements typical of a financial investment: use of capitals, the risk connected to it and expectation of a reward[36]. Hence the need to

35 The President of National Commission for Companies and the Stock Exchange at the *annual meeting with the il financial market,* on 6th May 2013, underlined the urgency for the financial system to face the need to protect investors as, while once they belonged to a limited *élite* of wealthy, aware and informed people, more recently the partecipation to financial markets involved sectors of population once excluded, although without an adequate increase in their financial culture.

36 In this sense for constant orientation of the doctrine and Supervisory Authority. See National Commission for Companies and the Stock Exchange report dem 8035334 on 16th April 2008. In literature, *ex multis*, F.ANNUNZIATA, , *La disciplina del mercato mobiliare,* Giappichelli, 2012, page 81 and following, A.URBANI, *I Servizi, le attività di investimento, e gli strumenti finanziari,* in VV.AA *L'ordinamento finanziario Italiano,* curated by F.Capriglione, Cedam, 2010, page 431 and following, P.FIORUZZI, E.S.DE NARDIS, N.B.PUPPIENI, in *Commento sub art. 94*, in VV.AA. *Il Testo Unico dellas*

design a protection system for investors, based on transmission of a flux of information giving the possibility to make an aware investment decision.

Protection for savers investing through on line portals is different from the one foreseen for other hypothesis of financial investment.

The main instrument to protect investors has traditionally been the Prospectus, a document containing all the most important information regarding the proposed investment, the subject proposing it, the operation risk. The relative discipline, contained in articles 94 and following of the Consolidated Law on Finance, gives details about a series of obligations and constraints particularly burdening for the offering company, related to typology, quantity and quality of information to supply, to ways and times in which they are published[37]. In this way, even with approval measure by National Commission for Companies and the Stock Exchange, checking that is complete, coherent and understandable, that *need for protection* felt by the entire discipline about support to investments is guaranteed[38].

Equity crowdfunding operations are exempt from applying measures in the Prospectus. In compliance to paragraph I of article 100 *ter* of the Consolidated Law on Finance according to which the amount of the offer must be lower to the one determined by National Commission for Companies and the Stock Exchange *ex* article 100, paragraph I, lett. *c)*[39], as it must be calculated in relation to all the offers made in the time of twelve months by the same subject and dealing with the same financial products.

To foster the use of this instrument of financing and promote investment in new business initiatives, regulators have simplified the position of bidders without leaving aside clients' protection, setting out particular obligations about behaviour and transparency for bidders, managers, but also for the same savers, in different phases of an awareness process, less burdening for bidders but equally protective for savers. These measures, are aimed at <<slowing-down>> *web* users' decision-making process, guided by instinct more considerably than in traditional financial investment decision-making process.

In the first phase, the issuing company provides the manager with all information regarding the proposed project, the nature of the investment, the type of instruments

Finanza, curated by M.Fratini – G. Gasparri, Utet 2012, page 1062 and following.

37 In compliance to paragraph II, first part of the article 94 of the Consolidated Law on Finance, Prospectus contains, in an easy and understandable form, all information that, depending on the characteristics of the issuer and of the financial products offered, are necessary so that investors can get to an aware assessment about assets and financial situation, on economic results and on issuers guarantor' expectations, as well as on financial products and on relative rights.

38 It is often believed the rationale of the discipline about offer of financial products is the need to protect its recipients, allowing them to use a series of information to under stand and assess the investment proposed and, consequently, make an aware choice about the value and the danger of the operation. Among others M.S.NUZZO, *Commento sub art.100* in *Le Leggi Commentate, Il Testo Unico della Finanza,* curated by M.Fratini and G.Gasparri, Utet, 2012, page 1155, F. ANNUNZIATA, *Op.Cit.*, page 348.

39 Article 34 *ter* I paragraph lett.*c)* of the Issuers Regolation N.11971 on 14th March 1999, as currently in force, establishes that provisions contained in Chapter I of the Title I of part IV of the Consolidated Law on Finance are inapplicabile for those offers whose total value is lower than 5.000.000 euros, calcolated on the renard expected by the offer of products in the European Union.

offered, the connected risk. This moment is particularly relevant as bidders are the only subject in charge of completeness and trustfulness of data and information supplied to the operator, as there is no kind of control by National Commission for Companies and the Stock Exchange [40].

When this information is gathered, starts the second phase characterized by a series of obligations for operators, who will have to provide different kinds of information. First of all about the type of activity carried out, included the way in which offers are selected or the potential entrustment to third parties, about costs for investors, measures adopted to reduce and manage risks of fraud and conflicts of interest. Moreover their task is to inform clients about general characteristics of the investment through *on line* portals, regarding the risk of loss of the entire capital, the risk of lack of liquidity, the possible prohibition to distribute profits, right of withdrawal and co-sale.
In addition, operators will make it available for investors, in a detailed, correct, clear, not misleading way and without omissions, all news about the individual offer received by the offering business. This information must be easily understandable for a rational investor, provided in a non-technical, clear, concise way, using, if possible, terms used in common language and will make it possible to make a comparison among offers on the same portal. Operators can't formulate recommendations regarding financial instruments offered that could influence the natural trend of acceptance.

The third phase is focused on the process of how to accept offers, characterized by particular burdens for savers. In compliance to paragraph II article 15 of the Regulation, they must read information of *investor education* on the institutional website of the National Commission for Companies and the Stock Exchange and of that relative to the single offer on operators' portal (*lett. a*), provide information about their own knowledge and experience to understand essential characteristics and risks that offered financial instruments imply *(lett.b)*, declare to be able to economically afford the potential entire loss of the investment that they want to make (*lett.c*). Operators, instead, will have to ensure access to the section of the portal dedicated to acceptance of the offer only for those investors, not professional, who complied with above mentioned procedures.

To get to the conclusion of the operation further measures must be taken. The latest modifications to the primary law and to the implementation Regulation, introduced the possibility, for authorized operators having particular organizational requisites, to make an appropriateness evaluation (*opt-in*). In compliance to article 13 paragraph 5 *bis* of the regulation., operators check, for every acceptance order, that clients have the necessary level of experience and knowledge to understand essential characteristics and risks that the investment implies, on the base of the information they provided. If operators believe that the instrument is not appropriate for clients, they warn them through electronic systems, while maintaining the necessary transmission to a bank or an investment company to finalize the order received. In this case, banks or

40 Attachment N.3 to the Regulation states that << Operators ensures that for any offer the following written warning will be previously given: information on the offer are not subject to approval by the National Commission for Companies and the Stock Exchange. Bidders are the only subjects in charge of completeness and trustfulness of data and information they provided… >>.

investment companies will proceed directly to finalize the operation, taking care only that it is carried out, even without a framework contract, therefore without written form.

If instead operators didn't make any appropriateness assessments, these will be made by banks or investment companies that received the purchasing order by managers, if: a) orders are issued by investors-physical persons and their relative countervalue is higher than five hundred euros for a single order and one thousand euros for total annual orders; b) orders are issued by investors-legal persons and their relative countervalue is higher than five thousand euros for a single order and ten thousand euros for total annual orders.

Orders whose value is lower than thresholds, will be evaluated by managers.

In all the mentioned cases, operations of finalizing investments are restricted to banks or investment companies equipped with organizational and procedural bodies, able to ensure high levels of reliability, correctness and transparency, which should fully protect savers. Investors' protection is therefore fully guaranteed by applying the disciplinary machine included in the Consolidated Law on Finance to provide investment services.

To complete the updated system, it has been established that for every single offer, a share of at least 5 per cent of financial instruments offered by professional investors or bank funds or innovative *start-up* incubators is subscribed to support innovation. This solution should help to increase the level of reliance that *retail* investors have in the innovative proposal, allowing not only to know professional subscriber subjects but above all, to estimate the technical assessment on feasibility and the seriousness of the business project carried out by particularly able subjects.

VII. BRIEF CONCLUSIONS.

Currently business models referred to as sharing economy are not regulated homogeneously, but comply with specific rules set for corresponding contractual frameworks. Except for investment crowdfunding which, as it has been described, has been object of different regulating measures, operators generally work exploiting the gaps of ordinary regulation, sometimes taking advantage of regulamentary gaps in different systems and the slow pace at which existing rules are updated. Despite the growing use of these models, this causes uncertainty and mistrust, especially in those who do not often use digital instruments. Waiting for uniform guidelines by the European Community, in order to promote the development of business projects based on the model of sharing economy, the most widespread approach is to integrate the law system of the reference country with codes of conduct, give clear indications on how to manage personal data and on responsibility of platforms (*better regulation, no overregulation*).

Actually the main topic in the international debate regarding regulating business models in the so-called sharing economy is the appropriateness or the need for proper rules to disciplinate the phenomenon, or if these could damage its nature and its values. However, supporters of sharing economy do not want rigid rules and regulations as they are incompatible with the spontaneous use of the web and they could disincentivate the development of these models. Currently there are areas of ambiguity at a regulation level or, even, absence of rules. In my opinion this regulatory gap should be filled through precise rules that could provide operators with certainties and clear and transparent fixed points, to undertake a new initiative and be able to use it. These rules could ensure fair competition, transparency, consumers' protection and a clear tax system. Regulation does not damage business initiative, if carried out with spontaneity and immediacy, but, on the contrary, it could incentivate it, providing operators with certainty in legal and economic relations.

The topic of Sharing Economy and of the opportunities of development and growth that it promotes today is at the core of the international debate about possible ways out of the crisis. The Economist underlined in one of its special issues on Sharing Economy, that collaborative consumptions represent without any doubt an answer to the economic crisis we are living. This small and tangible alternative drive for sure is not going to substitute traditional economy, but by putting forward models that are complementary to the existing ones and involving public administrations, traditional and new businesses, communities and single citizens, it could bring about social and economic benefits, affecting the capacity to create employment.

To this purpose it is necessary to overcome a certain level of generalized reluctance that currently represents one of the most important natural factors limiting the way we resort to these techniques through a specific, clear and homogeneous regulation at a European level, that could reinforce operators' trust in these new models of business.

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